

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
A LEASE AGREEMENT FOR CONSTRUCTION AND OCCUPANCY OF A
PERFORMING ARTS CAMPUS ON THE TOWN PARK-ART CENTER TRACT IN
WILLITS TOWN CENTER ON PROPERTY OWNED BY THE TOWN**

**Ordinance No. 10
Series of 2017**

RECITALS

1. The Town of Basalt, Colorado ("Town") owns a parcel of land in the Willits Town Center PUD ("WTC") comprised of approximately .78 acres and designated as the "Town Park - Arts Tract" ("Property") on the Plat of WTC. The initial developers of WTC dedicated the Arts Parcel to the Town for the purposes of a town park and arts center.

2. The Arts Campus at Willits ("TACAW") is an Internal Revenue Code Section 501(c)(3) entity that is registered with the state of Colorado as a non-profit corporation. TACAW was created specifically for the purpose of creating, managing and supporting a multi-disciplinary arts campus at the center of the Roaring Fork Valley to provide diverse programming in the arts. TACAW anticipates providing a venue for film, music, education, culinary arts, performing arts and special events at the Arts Center.

3. The Town is interested in furthering the development of a performing arts center to be constructed by TACAW and to this end have approved several resolutions addressing the construction and financing of the performing arts center.

4. The Town Council desires to approve a lease agreement to give TACAW time to obtain land use approvals, seek remaining funding and construct the performing arts campus.

5. At a public meeting on May 23, 2017, the Basalt Town Council approved this ordinance on first reading and scheduled second reading and public hearing for June 13, 2017, at a meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicants, Staff and members of the public.

6. At a public hearing on June 13, 2017, the Town Council heard evidence and

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

testimony from the Applicants, Town Staff, and members of the public.

7. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Basalt Town Council of Basalt, Colorado, as follows:

1. The TACAW Lease Agreement, attached hereto as **Exhibit A**, is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the Agreement on behalf of the Town Council. The Town Attorney may make minor modifications to the Lease Agreement before execution which are consistent with the intent of this approval.

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors, and assigns of the owners of the Property.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

4. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON June 13, 2017 by a vote of 6 to 0 on May 23, 2017.

READ ON SECOND READING AND ADOPTED, by a vote of 4 to 2 on June 13, 2017.

TOWN OF BASALT, COLORADO

By: _____

Jacque R. Whitsitt, Mayor



ATTEST:

By: *Pamela K Schilling*
Pamela K. Schilling, Town Clerk

First Publication: Thursday, June 1, 2017
Final Publication: Thursday, June 22, 2017
Effective date: Thursday, July 6, 2017

(EXHIBIT A TO ORDINANCE NO. 10 SERIES OF 2017)

TOWN OF BASALT

THE ARTS CAMPUS AT WILLITS LEASE AGREEMENT

This LEASE AGREEMENT is made this 6th day of July, 2017 between the **TOWN OF BASALT**, a home-rule municipality of the State of Colorado, whose address is c/o Town Manager, 101 Midland Avenue, Basalt, CO 81621 ("Landlord") and The Arts Campus at Willits, whose address is 701 East Valley Road, Basalt, CO 81621 ("Tenant").

WITNESSETH

WHEREAS, Landlord is the owner of the real property known as the Town Park Arts Center Tract on the ("Property").

WHEREAS, Landlord desires to lease the Property, consisting of approximately 32,144 square feet (hereinafter referred to as the "Premises") in accordance with the terms and conditions contained in this Lease Agreement;

WHEREAS, Tenant desires to plan, build and construct a Performing Arts Campus on the Premises and desires to lease from the Landlord the Premises in accordance with the terms and conditions contained in this Lease Agreement.

NOW, THEREFORE, for and in consideration of the payments to be made hereunder, and in further consideration of the terms, conditions, covenants and mutual promises contained herein, the parties hereto agree as follows:

1. Premises. The parties agree that this is a land lease only. Landlord does hereby lease the Premises to the Tenant and Tenant does hereby rent from Landlord the Premises, all in its current condition subject to the covenants and conditions hereinafter contained to wit:
 - a. That portion of the land area identified as the Town Park – Arts Center Tract, Willits Town Center according to the final plat and zone District Map of Willits Town Center Planned Unit Development, Recorded July 25, 2001 as Reception No. 763043, hereinafter referred to as "the Premises."
2. Term. The Lease term shall commence on July 6, 2017 and shall end on July 6, 2022. The term of the Lease Agreement shall automatically extend to

a total 99 years (July 6, 2116) upon the issuance by the Town of Basalt of a certificate of occupancy for the Performing Arts Campus to be occupied by the Tenant.

3. Rent. The rent for the first five years of the term of this Lease, commencing July 6, 2017 and terminating July 6, 2022 shall be Five dollars (\$5.00), payable in annual installments of \$1.00 commencing on July 6, 2017 and continuing on an annual basis thereafter. The rent for all years after the initial five-year term, if the below-described performance deadlines are satisfied, shall be \$1.00 per year until the termination of this Lease Agreement.
4. Tenant's Acceptance of Premises. Tenant accepts the Premises, together with any and all appurtenances thereto, as is, in its present existing condition. Except as may be specifically stated herein, the parties agree that no representation, statement, express or implied warranty has been made by or on behalf of the Landlord as to the condition of the Premises or its sustainability for the Tenant's use thereof. In no event shall the Landlord be liable for damages resulting from any condition or defect in the condition of the Premises.
5. Use of Premises. The Tenant may use and occupy the Premises for the sole and exclusive purpose of building and occupying a Performing Arts Campus ("Building") to be owned and operated by the Tenant. "Performing Arts Campus" or "Building" means a structure or structures to be constructed on the Premises and operated as performing arts campus along with accessory uses as shall be further defined and limited by the specific land use approvals granted by the Town of Basalt in accordance with the Basalt Municipal Code. The use of the Premises as a performing arts campus is a requirement of this lease, and the Tenant's failure to utilize the Premises for this purpose shall constitute a default in the Tenant's obligations pursuant to this Lease. The Tenant shall allow the RE-1 School District to have at least three performances per year at the Building including two rehearsals for each event for a fee to cover all reasonable associated costs. The Tenant shall allow the Landlord, through its designee, which may be changed from time to time, to install a public art piece on the Premises, provided the art piece and the placement thereof shall be subject to the reasonable approval of Tenant. The Tenant may place or install permanent art pieces within the building and on the Premises. However, temporary visual art or art for sale must be installed by or in partnership with the Art Base or the RE-1 School District unless the Art Base waives this restriction for a specific event or occurrence. No other use of the Premises is permitted without the written consent of the Landlord. The Tenant shall not use the Building as a visual arts center. No visual arts class shall be held on the premises unless in partnership with the Art Base or its successor organization unless the Art Base waives this restriction for a specific event or occurrence. However, if the Art Base moves its

operation outside of Town limits or ceases to exist, this provision related to the Art Base shall not apply. Tenant shall not use or permit the use of the Building for any unlawful purpose. Tenant shall be liable for the actions of its guests and invitees. No hazardous or dangerous activities are permitted on the Premises or Building.

6. Performance Deadlines. The Tenant must satisfy the following requirements. Failure to meet those requirements shall constitute a violation and default under this lease.

	Deadline	Performance Requirement
A – Land Use Approvals Deadline	July 1, 2018	Applicant must obtain sketch plan land use approvals for the first phase of construction
B – Building Permit Deadline and Bank Certification Deadline	July 1, 2020	Applicant must obtain a full building permit for the first phase of the Performing Arts Campus Public and Semi-Public Facilities required to be constructed in Phase I must have a construction permit and be secured by a letter of credit or other instrument to the satisfaction of the Town Attorney. Applicant must deliver a Bank Certification to Town demonstrating that it will have funds to complete Phase I.
C – Completed Construction Deadline	July 1, 2022	Applicant must obtain a final certificate of occupancy for the facilities on Phase I.

- A. Deadline A requires the Tenant to obtain sketch plan land use approvals under the Willits Town Center PUD and the Basalt Municipal Code for the use of the Property as a Performing Arts Campus approved in accordance with Deadline A.
- B. Deadline B requires the Tenant to obtain all necessary building and construction permits from the Town of Basalt for the construction of the Performing Arts Campus and required supporting facilities approved in accordance with Deadline A. It also requires the delivery to the Town of a bank certification that TACAW has been fully approved for a construction loan adequate to fund the capital project to a level required for Certificate of Occupancy, together with donations in hand and to be collected during construction.

- C. Deadline C requires the Tenant to obtain a final Certificate of Occupancy for the use and occupancy of the Performing Arts Campus built in accordance with Deadline B for Phase I.
 - D. The Landlord may, for good cause shown as determined in the sole discretion of the Landlord, grant extensions of the deadlines referred to in this section. Until a Building Permit is issued, Tenant shall provide Landlord quarterly progress reports concerning the then-current activities toward reaching the goals outlined in this section. Thereafter, until a Certificate of Occupancy is issued, Tenant shall provide Landlord annual progress reports concerning the then-current activities toward reaching the goals outlined in this Section.
7. Utilities. Tenant shall pay all utilities for the Premises throughout the term of this Lease, including charges for water, heat, sewer, electricity and light, cable TV, telephone, trash collection, and general maintenance and any other utilities or services desired by Tenant. Tenant shall have the natural gas, water, electricity, telephone, and cable TV, to the extent desired by Tenant, placed in Tenant's name with all vendors of such services. In addition, Tenant shall contract directly with all utility and service companies.
 8. Real Estate Taxes. As the Premises is owned by Landlord and the Building will be owned by Tenant which has provided documentation that it is a 501(C) 3 under Federal Tax Laws, it is anticipated that Tenant will not have to pay real property taxes for its use and occupancy of the Building. However, any real property taxes that may be levied on the Premises or Building shall be paid by Tenant.
 9. Repairs and Maintenance. Tenant shall be solely responsible for the repair, replacement and maintenance of the Performing Arts Campus and other improvements it places or constructs on the Premises during the term of this lease.
 10. Damage to Premises. Tenant shall be solely responsible for damage to the Premises and the improvements located thereon regardless of cause and whether caused intentionally or by negligence of Tenant, its agents, employees, guests and invitees.
 11. Snowplowing and Snow Removal/Yard Maintenance. The parties agree that the Town does not maintain or provide snow plowing for the Premises. The responsibilities for maintenance between the Landlord and Tenant will be further refined in the Performing Arts Campus land use approval process.
 12. Insurance and Indemnification. The Tenant agrees to protect, indemnify and

hold harmless Landlord, its board members, employees and agents, from and against any loss, damage or claims, including reasonable attorneys' fees and costs, arising out of: (i) the use, including the initial construction, subsequent phases and maintenance, of the Lease Area by the Tenant or its contractors, guests or invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (ii) any mechanic lien claims for unpaid labor, services or materials affecting any of the Lease Area; and (iii) any and all costs associated with removal of improvements located in the Premises upon termination of this Lease Agreement as further outlined in Section 20. The Tenant shall obtain, at its expense, and keep in full force and effect throughout the term of this Lease Agreement, with a reputable insurer the following type and limits of insurance:

General Liability- Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal and advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Auto Liability	\$1,000,000 CSL
Workers Compensation Liability	\$100,000 / \$500,000 / \$100,000
Liquor liability –each occurrence	\$1 million

The above insurance shall be in place at all times; and all said policies shall name Landlord as an additional insured and the Tenant shall provide Landlord with proof of such insurance. In recognition of the long-term nature of this lease and the likelihood of changing economic conditions during that time, Landlord shall have the right to request the Tenant to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.

13. Improvements and Alterations. No alterations, additions, or improvements shall be made and no fixtures shall be installed in or attached to the Premises, except in accordance with land use entitlements approved by the Town and approval in accordance with the Basalt Municipal Code.
14. Signs. The Tenant shall not place nor allow to be placed any signs of any kind whatsoever upon, in or about the said Premises or any part thereof, except as otherwise approved by the Town in accordance with the Willits Town Center PUD and the Town of Basalt's Municipal Code.
15. Alcohol. The Premises shall not be construed as a Town park for the purposes of exempting the Tenant from applying the provisions of municipal liquor permit requirements under the provisions of Section 10-42 of the Chapter 10 of the Municipal Code.
16. Compliance with Law and Non Profit Status. The Tenant shall comply with all laws, ordinance, rules, regulations, requirements, and directives of the federal, state and municipal governments that are applicable to and affecting the said Premises. The Tenant shall maintain IRS § 501(c) status.
17. Quiet Enjoyment. So long as the Tenant is not in default hereunder during the term hereof or any renewal or extension hereof, the Landlord covenants that the Tenant shall peacefully and quietly occupy and enjoy the Premises subject of the terms hereof. The Landlord warrants and agrees to defend the title to the Premises, and Landlord further warrants that it has full power and authority to execute this Lease, be bound by, and perform all its obligations hereunder.
18. Assignment/Sublease. Tenant shall not let, sublet, transfer, assign, or otherwise in any way alienate, encumber or suffer the Premises, or any part of portion thereof, to be used by others without he prior written approval of the Landlord which may be granted or denied in the Landlord's sole subjective discretion.
19. Surrender and Termination. Upon termination of this Lease for any reason, Tenant shall surrender the Premises to Landlord.
20. Improvements on Termination. Upon termination of this Lease Agreement, whether based upon its expiration, lease violation, abandonment, mutual agreement or otherwise, the Building and any other improvements attached to the Land shall automatically and without additional consideration become the property of the Landlord. Tenant shall, at that time, deliver to Landlord a Bargain and Sale Deed conveying any interest Tenant has in the Premises, Building and the property.

21. Re-Entry Upon Tenant Default. If there shall be a default in the performance of Tenant's obligations under this Lease or if there shall be a delinquency by Tenant in the performance of any covenant, agreement, condition, rule or regulation herein contained or hereafter established for more than fourteen (14) days after written notice of such default from Landlord to Tenant, and opportunity to cure during the 14 day period, Landlord or Landlord's agent, at any time thereafter may give written notice to Tenant specifying such event of default and stating that this Lease shall terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice, this Lease and all rights of Tenant hereunder shall terminate.

Upon termination of this Lease pursuant to the preceding subparagraph, Tenant shall peacefully surrender the Premises to Landlord, and Landlord may, upon or at any time after such termination, without further notice, re-enter the Premises and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises. Tenant shall be responsible for any and all costs and attorney's fees incurred by Landlord in enforcing the provisions contained in this Section. At any time after such termination, Landlord may relet the Premises or any part thereof, in the name of the Landlord or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions as Landlord, at its discretion, may determine, and may collect and receive the rents therefor.

22. Surrender of Premises Upon Termination. At the termination of this Lease, Tenant shall surrender the Premises to Landlord in good condition and repair, excepting for reasonable wear and tear. Tenant shall have the right at the end of the term hereof to, and upon demand by Landlord Tenant shall remove any equipment, furniture, trade fixtures not affixed to the Building, and other personal property placed in the Building by Tenant and Tenant shall promptly repair any damage to the Building caused by such removal and Landlord may require removal of attached fixtures at its sole discretion.

23. Attorneys' Fees and Waiver of Right to Jury. In the event of any litigation or other action or proceeding between the parties hereto arising out of the performance or non-performance of this Lease, or enforcement of any rights or remedies hereunder, including any indemnities herein contained, the prevailing party shall be awarded in such litigation, action or proceeding as part of any judgment, award or other relief, its reasonable attorney's fees and costs incurred. The Landlord and Tenant expressly waive any right which either may have to trial by jury of any dispute arising under this Lease relating to the issues of interpretation or termination of this Lease, and rights to possession of the Premises.

24. Notices. All notices required under the terms of this Lease shall be given in person or by mailing such notices by certified or registered mail, return receipt requested, to the address of the party as shown at the beginning of this Lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner. If not sooner received, any notice given by mail shall conclusively be deemed received three (3) days after the date of certification or registration. Unless and until otherwise designated, notice shall be given to the Landlord and Tenant as follows:

Landlord:
Town Manager
Town of Basalt
101 Midland Avenue
Basalt, CO 81621

Tenant:
President
360 Market Street
Basalt, CO 81621

25. Situs. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action commenced to enforce the terms of this agreement shall be brought in the Eagle County Courts and the parties hereto agree that venue for any such action shall be proper in the Eagle County Courts.

26. Waiver. No assent by Landlord, expressed or implied, with respect to any breach or default of the terms, conditions or covenants contained in this lease agreement shall in any way be construed as a waiver of any succeeding or other breach or default.

27. Entire Lease. This Lease contains the entire contract between the parties and there are no other agreements, understandings, representations, or warranties except as expressly set forth herein. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the Landlord and Tenant.

28. Binding Effect. All the terms, covenants, and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns respectively.

29. Yearly Report to Council. The Landlord entered into this Lease Agreement with the Tenant as a result of the Social Capital and Community Benefits to be provided to the Basalt Community. In order to further mutual goals, the Tenant agrees to meet with the Landlord at least once a year at the Landlord's request to review how the Tenant is furthering the goals of the Town of Basalt to increase vitality in the Town of Basalt area and make the objectives of the Performing Arts Campus available to all citizens and tourists in the Basalt area. The Tenant also agrees to provide financial information to the Landlord including yearly revenues, expenditures and fund balances in a building maintenance and capital repairs fund.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year above first written.

LANDLORD:
TOWN OF BASALT, a Colorado home rule municipality

By: 

Jacques R. Whitsitt, Mayor

ATTEST:

By: 

Pamela K. Schilling, Town Clerk

TENANT:
THE ARTS CAMPUS AT WILLITS, a Colorado non-profit Corporation

By: 

Julia Marshall, President

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this 22 day of September, 2017 by
Julia Marshall as President of The Arts Campus at Willits.

Witness my hand and official seal.

My commission expires: 02-23-2021

Connie C. Holcomb
Notary Public

